

Hearing Date: March 7, 2017
Hearing Time: 2:00 PM
Hearing Place: Utica, NY
Objection Deadline: March 6, 2017; 12:00 noon

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

FOLTS HOME, *et al.*,¹

Debtors.

Case No. 17-60139
Chapter 11 (Main Case)
Case No. 17-60140

Jointly Administered

**MOTION FOR ENTRY OF ORDER AUTHORIZING
DEBTORS TO FILE CERTIFICATES OF SERVICE CONTAINING
NAMES OF RESIDENTS AND THEIR FAMILIES UNDER SEAL**

Debtors Folts Home and Folts Adult Home, Inc. (“FAH”) (collectively, the “Debtors”), by and through their undersigned counsel, hereby move this Court (this “Motion”) for entry of an order, pursuant to 11 U.S.C. § 105(a), Rule 9018-1 of the Local Bankruptcy Rules of the Northern District of New York (“Local Rules”) and Rule 5.2(d) of the Federal Rules of Civil Procedure (“Federal Rules”), authorizing the Debtors to file Certificates of Service containing the names of residents of Folts Home and FAH and their families under seal. In further support of this Motion, the Debtors respectfully represent as follows:

Background

1. On February 16, 2017 (the “Petition Date”), the Debtors filed separate, voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Folts Home (2183) and Folts Adult Home, Inc. (7237).

Court for the Northern District of New York (the “Court”), commencing the Debtors’ chapter 11 cases (the “Chapter 11 Cases”). The Debtors’ skilled nursing home and adult residence are currently operated by duly-appointed receivers HomeLife at Folts, LLC and HomeLife at Folts-Claxton, LLC (collectively, “HomeLife”), respectively. No request for a trustee or examiner has been made in these Chapter 11 Cases and, as of the date of the filing of this Motion, no official committees have been appointed or designated. The Debtors’ cases are being jointly administered pursuant to an Order of Joint Administration entered by the Court on February 16, 2017.

2. Folts Home is a New York not-for-profit corporation and the owner of a 163-bed long-term residential health care and rehabilitation facility located at 100-122 North Washington Street, Herkimer, New York 13350 (the “Nursing Home Facility”). In addition to long-term skilled nursing and residential care, Folts Home provides memory care to residents with dementia, palliative care and respite care and operates an adult day care program. Folts Home also offers rehabilitation services, such as physical, occupational and speech therapy, on both in-patient and out-patient bases.

3. FAH, also known as Folts-Claxton, is a New York not-for-profit corporation and the owner of an 80-bed adult residential center that was constructed in 1998 and is located at 104 North Washington Street, Herkimer, New York 13350 (the “Adult Home Facility”, and together with the Nursing Home Facility, the “Facilities”). FAH residents reside in separate apartments and are provided services such as daily meals, laundry, housekeeping and medication assistance.

4. Since February 14, 2015, HomeLife has operated the Facilities as receiver pursuant to Receivership Agreements executed by the Debtors, HomeLife and the New York

State Department of Health. HomeLife is responsible for all of the day-to-day operations and resident care at the Facilities.

5. A more detailed factual background relating to the commencement of these Chapter 11 Cases is set forth in the *Joint Affidavit of Anthony E. Piana, DDS and James H. Morey in Support of Chapter 11 Petitions and First Day Motions and Pursuant to Local Rule 2015-6* sworn to on the 14th day of February, 2017 (the “Joint Affidavit”) filed in these Chapter 11 Cases and incorporated herein by reference².

Jurisdiction

6. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The relief requested herein is authorized by 11 U.S.C. § 105(a), Rule 9018-1 of the Local Rules, and Rule 5.2(d) of the Federal Rules.

RELIEF REQUESTED

7. On February 24, 2017, in connection with the commencement of the Chapter 11 Cases, the Bankruptcy Court Clerk’s office issued a Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors and Deadlines (the “Notice”), which was served upon all creditors identified in the Joint Mailing Matrix filed by the Debtors on February 23, 2017.

8. In addition to notifying the creditors on the Joint Mailing Matrix of the commencement of the Chapter 11 Cases, the Office of the United States Trustee (the “UST”) has requested that the Debtors serve a copy of the Notice on all residents of the Facilities and their families. Currently, Folts Home has approximately 145 residents, and FAH has approximately 69 residents, for a total of 214 residents.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Joint Affidavit.

9. The identities of the residents residing at the Facilities are protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which prohibits the release of a resident’s name or health care information to third parties without the consent of the resident or his or her family. The filing of the Certificate of Service on a bankruptcy case docket that is accessible by the public would constitute a violation of HIPAA.

10. The Debtors are willing to serve the Notice upon the residents and their families as required by the UST, and will serve the Notices during the week of February 27, 2017. In order to avoid a violation of the HIPAA regulations, and to protect the privacy of the residents and their families, the Debtors respectfully request that they be permitted to file the Certificate of Service related to the Notice under seal, and that the Certificates of Service for all future notifications required to be served upon the residents and their families also be filed under seal.

BASIS FOR RELIEF

11. The Debtors respectfully submit that the relief requested herein is appropriate under the Bankruptcy Code and applicable rules.

12. Pursuant to section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code.

13. Rule 9018-1 of the Local Rules allows for filings made under seal in this Court. Furthermore, Rule 5.2(d) of the Federal Rules provides that the Court “may order that a filing be made under seal without redaction.”

14. Filing the Certificates of Service containing the names of the residents and their families under seal will promote the administration of the Chapter 11 Cases by protecting resident privacy and preserving the residents’ confidence in the quality of care at the Facilities.

Significantly, it would prevent potential litigation under HIPAA, which would cause additional delay, distraction and expense to the Debtors' chapter 11 efforts. The relief will benefit the Debtors' estates and their creditors by conserving resources, while at the same time not prejudicing the rights of any party in interest.

15. Accordingly, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, the residents and other parties in interest, and will foster the efficient and economic administration of the Chapter 11 Cases.

NOTICE

16. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Northern District of New York, (ii) counsel for HomeLife; (iii) counsel for HUD and the IRS; (iv) counsel for the DOH; (v) the Debtors' twenty (20) largest unsecured creditors as set forth in the consolidated list filed with the Debtors' petitions and (vi) all required governmental agencies. In light of the nature of the relief requested herein, the Debtors submit that no further notice is required.

17. No prior application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request entry of an Order authorizing the Debtors to file the Certificates of Service containing the names of the residents and their families under seal in these Chapter 11 Cases as requested herein, and granting such other relief as the Court deems just and proper.

Dated: February 27, 2017
Syracuse, New York

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: /s/ Camille W. Hill
Stephen A. Donato, Esq., Bar Roll No. 101522
Camille W. Hill, Esq., Bar Roll No. 501876
Olga F. Peshko, Esq., Bar Roll No. 519302
Office and Post Office Address:
One Lincoln Center
Syracuse, New York 13202
Tel: (315) 218-8000
Fax: (315) 218-8100
Email: sdonato@bsk.com
chill@bsk.com
opeshko@bsk.com

*Proposed counsel for the Debtors and
Debtors in possessions*